

E-Filed: October 28, 2013

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Attorneys for Defendants
McCARTHY BUILDING COMPANIES, INC.¹,
FEDERAL INSURANCE COMPANY, and
TRAVELERS CASUALTY AND SURETY

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, for the use
and benefit of DVBE TRUCKING
CONSTRUCTION COMPANY, INC.,

Plaintiffs,

vs.

McCARTHY BUILDING COMPANY, INC.,
FEDERAL INSURANCE COMPANY, and
TRAVELERS CASUALTY AND SURETY,

Defendants.

Case No.: CV 13-03699

**JOINT STIPULATION TO STAY
PROCEEDINGS;
~~PROPOSED~~ ORDER**

Magistrate Judge: Honorable Howard R.
Lloyd

Action Filed: August 9, 2013

**Receipt of Complaint
Acknowledged:** September 13, 2013

STIPULATION

Plaintiff DVBE Trucking Construction Company, Inc. (“DVBE”) and Defendants McCarthy Building Companies, Inc. (“McCarthy”), Federal Insurance Company, and Travelers Casualty and Surety (collectively, the “Defendants”) by and through their respective counsel, STIPULATE and AGREE as follows:

WHEREAS DVBE filed a Complaint in this Court on August 9, 2013 (the “Complaint”);

WHEREAS the Defendants acknowledged and accepted service of the Complaint on

¹ Erroneously sued as McCarthy Building Company, Inc.

1 September 13, 2013;

2 WHEREAS the claim in DVBE's Complaint is for the payment of monies on a project
3 McCarthy built for the Department of Veterans Affairs ("VA") (the "Project");

4 WHEREAS McCarthy entered into a prime contract with the VA for the Project and has
5 submitted a request to the VA for an equitable adjustment ("REA") of that contract and the REA
6 includes an adjustment for the claims DVBE has made in its Complaint;

7
8 WHEREAS if the VA does not grant McCarthy's REA, McCarthy has the right to proceed
9 with a claim against the VA under the Contract Disputes Act ("CDA"), which governs such claims;

10 WHEREAS the written subcontract between DBVE and McCarthy contains a provision that
11 states "[f]or any dispute involving the Owner, Subcontractor agrees to follow the disputes resolution
12 procedures agreed to by the McCarthy and the [VA] . . . [DBVE] shall be bound by the result of any
13 such dispute resolution procedure with the [VA] or others to the same degree as McCarthy.";

14 WHEREAS the last day to meet and confer regarding the parties' initial disclosures, early
15 settlement ADR, ADR process selection, and discovery plan is October 22, 2013;

16 WHEREAS the last day to file a Rule 26(f) report, complete initial disclosures or state
17 objection to Rule 26(f) Report and file Case Management Statement per the Court's Standing Order
18 is November 5, 2013;

19
20 WHEREAS the Initial Case Management Conference is presently scheduled for November
21 12, 2013 in Courtroom 2, 5th Floor SJ at 1:30 p.m.;

22 WHEREAS the parties wish to stay all proceedings in this matter, including hearings,
23 briefings, appearances, the exchange of Rule 26 Initial Disclosures, and any other deadlines imposed
24 by law of the Court pending full and final resolution of McCarthy's REA; provided, however, that
25 Defendants may file an Answer to the Complaint;

26 WHEREAS the parties stipulate and agree that either one may at any time request that the
27 stay be lifted by the Court and the other party agrees to execute a joint stipulation in support of that
28 request so long as the moving party gives the other party no less than fourteen-days notice before

1 making such a request; and

2 WHEREAS the parties further stipulate and agree that the stay requested herein is not
3 requested for purposes of delay and will not result in any prejudice to the parties or to the Court.

4 **IT IS THEREFORE STIPULATED AND AGREED** by DVBE and Defendants, by and
5 through their respective counsel, and the Court is respectfully requested to order that:

- 6
- 7 (1) this matter be stayed in its entirety until McCarthy's REA or subsequent claims to the VA
8 are resolved or the stay is lifted; provided, however, that Defendants may file an Answer
9 to the Complaint;
- 10 (2) the last day to meet and confer regarding the parties' initial disclosures, early settlement
11 ADR, ADR process selection, and discovery plan be continued until 75 days after
12 McCarthy's REA is resolved or the stay is lifted;
- 13 (3) the last day to file a Rule 26(f) report, complete initial disclosures or state objection to
14 Rule 26(f) Report, and file Case Management Statement per the Court's Standing Order
15 be continued until 90 days after McCarthy's REA is resolved or the stay is lifted;
- 16 (4) the Initial Case Management Conference in Courtroom 2, 5th Floor SJ at 1:30 p.m. be
17 continued until 97 days after McCarthy's REA is resolved or the stay is lifted; and
- 18 (5) either party may request that the stay be lifted and the other party must file a joint
19 stipulation in support of that request so long as the moving party gives the other party no
20 less than fourteen (14) days notice before making such a request.
- 21

22 **IT IS SO STIPULATED.**

23 DATED: October 22, 2013

LAW OFFICES OF BRIAN PRESTON

24 /s/ Brian Preston

25 By:

26 Brian Preston, Esq.
27 Attorneys for Plaintiff
28 DVBE TRUCKING AND CONSTRUCTION
COMPANY, INC.

1 DATED: October 22, 2013

SMITH, CURRIE & HANCOCK LLP

2 /s/ Jay R. Houghton

3 By:

4 Jay R. Houghton, Esq.
5 Attorneys for Defendants
6 McCARTHY BUILDING COMPANIES, INC.,
7 FEDERAL INSURANCE COMPANY, and
8 TRAVELERS CASUALTY & SURETY
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ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Jay R. Houghton, attest that concurrence in the filing of this document has been obtained from each of the signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 22, 2013, at San Francisco, California.

/s/ Jay R. Houghton

Jay R. Houghton, Esq.

~~[PROPOSED]~~ ORDER

The Court, having reviewed the parties' Stipulation, hereby orders that:

(1) this matter be stayed in its entirety until McCarthy's Request for Equitable Adjustment ("REA") to the Department of Veterans Affairs ("VA") is fully and finally resolved or the stay is lifted;

(2) either party may at any time request that the stay be lifted;

(3) if one party would like the stay lifted by the Court, the other party will jointly stipulate to such a request so long as the moving party gives the other party no less than fourteen (14) days notice before filing such a request;

~~(4) the last day to meet and confer regarding the parties' initial disclosures, early settlement ADR, ADR process selection, and discovery plan will be the date that is 75 days after McCarthy's REA is fully and finally resolved or the stay is lifted;~~

~~(5) the last day to file a Rule 26(f) report, complete initial disclosures or state objection to Rule 26(f) Report, and file Case Management Statement per the Court's Standing Order will be the date that is 90 days after McCarthy's REA is fully and finally resolved or the stay is lifted; and~~

~~(6) the Initial Case Management Conference to be held in Courtroom 2, 5th Floor SJ at 1:30 p.m. will held on the date that is 97 days after McCarthy's REA is fully and finally resolved or the stay is lifted.~~

~~(4) the Initial Case Management Conference and associated deadlines will be reset when the stay is lifted.~~

IT IS SO ORDERED.

Dated: 10/28/2013

By: 

Honorable Howard R. Lloyd
Magistrate Judge of the United States
District Court, Northern District of
California